

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TAMMY R. MCMASTER,

Plaintiff,

vs.

SAM'S EAST, INC.

Defendants.

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CASE NO. 1:21-cv-172-TBM-RPM

NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Defendant, Sam's East, Inc., ("Sam's") gives notice pursuant to 28 U.S.C. §§ 1441 and 1446 that this cause is hereby removed from the Circuit Court of Harrison County, Mississippi, to the United States District Court for the Southern District of Mississippi, Southern Division. As grounds for this removal, Defendants show as follows:

1. An action was commenced against Sam's in the Circuit Court of Harrison County, Mississippi, entitled "*Tammy McMaster, Plaintiff v. Sam's East, Inc.*." Civil Action No. 24CI1:20-CV-00532. The State Court File is attached hereto as "Exhibit A".

2. According to the Circuit Clerk's office for the Circuit Court of Harrison County, Mississippi, service of the initial pleading setting forth Plaintiffs' claims for relief was affected upon Sam's on March, 2021, which was Sam's first actual notice of this action.

3. This notice of removal is filed in the United States District Court for the Southern District of Mississippi, Southern Division, within thirty days of receipt by the Defendant of other papers setting forth the claim for relief upon which Plaintiff's action is based in accordance with 28 U.S.C. § 1446(b)(1). The Circuit Court of Harrison County, Mississippi, is within this Court's district and division; therefore, this action is properly removable to this Court under 28 U.S.C. § 1441(a) & (b).

4. This Court has diversity jurisdiction over this matter pursuant to the provisions of 28 U.S.C. § 1332 since the parties are diverse and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

5. Plaintiff is now and at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, a citizen of the State of Mississippi. In her Complaint, Plaintiff states that she is a resident of Mississippi. (Complaint, ¶ 1.)

6. Defendant Sam's East, Inc., is now and was at the commencement of this action, organized under the laws of the State of Arkansas, with its principal place of business in Arkansas.

7. Plaintiff's Complaint seeks actual/compensatory damages for personal injuries to Plaintiff, Tammy McMaster, including "serious injuries to her left leg/knee which resulted in surgery", past and future medical expenses associated with her injuries, past and future physical pain and suffering including loss of enjoyment of life and household services, past and future mental anguish and emotional distress, past and future loss of wage and earning capacity, permanent scarring and disfigurement, and permanent impairment and disability. (Complaint, ¶s 7 and 8).

8. In her Complaint, Plaintiff did not request a specific amount of damages. Therefore, on April 15, 2021, Sam's propounded requests for admissions to Plaintiff as to the amount in controversy. On April 23, 2021, the Plaintiffs filed her answers to Sam's requests for admissions denying that the damages did not exceed \$75,000.00, denying that the amount in controversy did not exceed \$75,000.00,

exclusive of interest and costs, and otherwise answering in a manner establishing that the jurisdictional amount in controversy had been met (Exhibits "B" and "C").

9. This action may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441, as amended, because this action is a civil action of which the United States District Courts have original jurisdiction under 28 U.S.C. § 1332.

10. Pursuant to 28 U.S.C. §1446 (d), a true and correct copy of this Notice of Removal is filed with the Clerk of the Circuit Court of Harrison County, Mississippi, and a written notice of this removal has been served on all adverse parties as required by law.

11. If any questions arise as to the propriety of the removal of this action, Defendant requests the opportunity to present a brief and oral argument in support of its position that this cause is removable.

Respectfully submitted this 21st day of May, 2021.

/s/ W. Pemble Delashmet

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day May 21, 2021 served a copy of the foregoing pleading upon counsel as listed below by depositing the same in the U. S. Mail, postage prepaid and properly addressed.

M. Scott Bishop
Morris Bart, LTD
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/s/ W. Pemble DeLashmet
OF COUNSEL